

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIAN PATRICK SPENSER PERCEVAL,)

Petitioner,)

v.)

Case No. CIV-13-914-D

UNITED STATE OF AMERICA,)

Respondent.)

ORDER

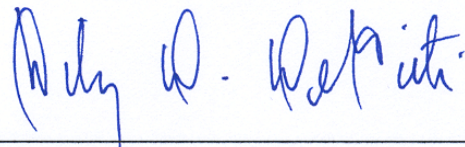
This matter comes before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell pursuant to 28 U.S.C. § 636(b)(1)(B). Judge Mitchell recommends that the Petition for a Writ of Error Coram Nobis, filed *pro se* on August 26, 2013, be dismissed as duplicative of an identical petition filed a few days earlier in Petitioner's criminal case, *United States v. Perceval*, No. CR-85-206-D (W.D. Okla. August 20, 2013). The criminal case filing has already been considered and denied by the Court, and Petitioner has taken an appeal, No. 13-6264, which is currently pending before the Tenth Circuit.

The record reflects that Petitioner has neither filed a timely objection to the Report nor requested additional time to object, even though he was expressly advised of the right to object, the procedure and deadline for filing an objection, and the consequences of failing to object. Therefore, the Court finds that Plaintiff has waived further review. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Also, the Court concurs in Judge Mitchell's

recommendations to dismiss the Petition and deny as moot Petitioner's motion for leave to proceed *in forma pauperis* in this case.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 5] is ADOPTED in its entirety. The Petition for a Writ of Error Coram Nobis is DISMISSED, and judgment shall be entered accordingly. Further, Petitioner's Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 [Doc. No. 2] is DENIED as moot.

IT IS SO ORDERED this 26th day of February, 2014.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE